

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

MONAURIS MARQUIS RAIFORD

PETITIONER

v.

CASE NO. 5:19-cv-00245-KGB-JTK
CASE NO. 4:20-cv-01510-KGB-JTK

DEXTER PAYNE, *Director*,
Arkansas Division of Correction

RESPONDENT

ORDER

On July 17, 2018, Petitioner entered into a negotiated guilty plea to second-degree murder in Mississippi County (Arkansas) Circuit Court. He received a sentence of 240 months and an additional 120 months suspended imposition of sentence in the Arkansas Division of Correction. On July 31, 2019, Petitioner filed a pro se habeas petition pursuant to 28 U.S.C. § 2254. *Raiford v. Payne*, Case No. 5:19-cv-00245-KGB-JTK. On October 1, 2019, the undersigned recommended the Petition be dismissed with prejudice. The recommendation is currently pending before United States District Judge Baker.

On July 31, 2019, Petitioner filed the instant habeas petition pursuant 28 U.S.C. Section 2254. The petition challenges the same judgment as the petition filed on July 31, 2019. In response to the petition, Respondent filed a Motion to Consolidate Cases (Doc. No. 8) and Motion to Stay Order (Doc. No. 9) that directs Respondent to file a Response to the petition.

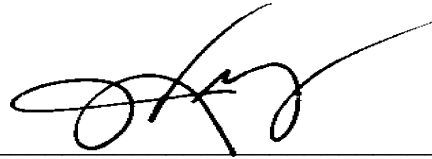
The motions (Doc. Nos. 8 and 9) are GRANTED. The Court construes the instant petition as a motion to amend the previous petition since the first petition has been neither

adjudicated on the merits nor dismissed with prejudice, and denies the motion. *See United States v. Sellner*, 773 F.3d 927 (8th Cir. 2014) (citing *Woods v. Carey*, 525 F.3d 886, 889-890 (9th Cir. 2008)) (holding when a pro se petitioner files a second § 2254 motion before the district court rules on the petitioner's first § 2254 motion, the second motion should be construed as a motion to amend the first).

Because both habeas petitions arise out of the same conviction and the first Section 2254 petition remains pending, IT IS THEREFORE ORDERED that:

1. The habeas petition filed herein is construed as a Motion for Leave to Amend in Case No. 5:19-cv-00245-KGB-JTK, and it is denied.
2. The Clerk close and consolidate this action into Case No. 5:19-cv-00245-KGB-JTK.
3. Respondents Motion to Consolidate (Doc. No. 8) and Motion to Stay (Doc. No. 9) are granted.

SO ORDERED THIS 29th day of January, 2021.



UNITED STATES MAGISTRATE JUDGE